

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 1572 OF 1998(K)

PETITIONER:

S. REGHU, INDULAYAM,
MAYYANAD P.O., KOLLAM.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS:

1. T. VENUGOPAL,
GENERAL SECRETARY,
QUILON DISTRICT MOTOR AND GENERAL WORKERS' UNION, CITU,
CITU BHAVAN, KOLLAM-13.
2. THE INDUSTRIAL TRIBUNAL, KOLLAM.

GOVERNMENT PLEADER SRI. BASANT BALAJI.
SRI.P.B.SURESH KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

O.P. 1572/1998

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE COPY OF RETRENCHMENT NOTICE DATED
29.7.1993 ISSUED TO WORKMEN BY THE PETITIONER
CONSEQUENT TO CLOSURE OF BUSINESS.
- EXT.P2 TRUE COPY OF STATUTORY NOTICE FOR
RETRENCHMENT OF WORKMEN DATED 29.7.1993 ISSUED
BY THE PETITIONER TO THE GOVERNMENT.
- EXT.P3 TRUE COPY OF CLAIM STATEMENT DATED 13.10.1995
FILED BY THE 1ST RESPONDENT BEFORE THE 2ND
RESPONDENT.
- EXT.P4 TRUE COPY OF WRITTEN STATEMENT DATED 21.12.1995
FILED BY THE PETITIONER BEFORE THE 2ND
RESPONDENT.
- EXT.P5 TRUE COPY OF AWARD DATED 30.6.1997 PASSED BY THE
2ND RESPONDENT.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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O.P. NO. 1572 OF 1998

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DATED THIS, THE 28TH DAY OF MARCH, 2007.

J U D G M E N T

Petitioner impugns Ext.P5 award passed by the Industrial Tribunal, Kollam in I D. No. 6/95. The petitioner was a proprietor who was running a bus. According to him, the stoppage of the service was necessitated for two reasons ie. (i) he himself is a driver and (ii) the bus service was running on heavy loss. Therefore, he thought that continuance of the bus service will be a burden for him and hence he stopped the business. The two workmen were thus offered retrenchment compensation as per Ext.P1 notice. But they did not accept the same and raised an industrial dispute which was referred to the second respondent- Industrial Tribunal, Kollam for adjudication. The issues referred were (i) whether the stoppage of bus service of Stage Carriage No. 1035 with effect from 25.6.1993 is justifiable or not and (ii) the relief which workers are entitled to during the period of stoppage of work. The correctness or otherwise of the retrenchment benefit was not however a specific issue for adjudication before the Tribunal. The Tribunal after holding that the management did not adduce

sufficient evidence to prove that there is any justifiable reason for stoppage of the bus, went on to hold that some conciliation proceedings are pending and it was during that period that the workmen were terminated without seeking permission from the Conciliation Officer. The Tribunal directed that the workmen concerned will be entitled for wages during the period besides retrenchment compensation and notice pay. When the validity of retrenchment itself is not an issue referred, the Tribunal could not have passed an award as though they are deemed to be in service. If only the retrenchment is held to be invalid then the workmen will be entitled for wages in appropriate cases. But as already stated above, since there is no issue raised, the Tribunal was not justified in directing payment of wages during the period. Further, according to the petitioner, he has permanently stopped the service and never restarted the same. If that be so, the factum of closure alone be then an issue; but not the bona fides of the closure.

2. In such circumstances, the direction issued by the Tribunal to the extent it has directed to pay the wages during the period in question is liable to be quashed. However, since even according to the petitioner, they have been retrenched from service, certainly they are entitled to for compensation, calculated by 15 days for an year.

3. In this case, five years has been quantified as total period of service rendered by them. If so, the workmen are entitled to the salary equivalent to 2 1/2 months pay of last pay they have drawn with further 30 days' wages as notice pay. They will also be entitled for gratuity equivalent to 15 days' wages for five years' service. The above amount shall be calculated and shall be paid by the petitioner to the employees.

The relief portion is thus modified as above. The original petition is allowed to the above extent.

P.R. RAMAN,
(JUDGE)

knc/-

O.P. NO. 1572/1998

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P.R. RAMAN, J.

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O.P. NO. 1572/1998

J U D G M E N T

28TH MARCH, 2007.